

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Chapter 7 Estate of Bernard L. Madoff,

Plaintiff,

v. SIX SIS AG,

Defendant.

Adv. Pro. No. 12-01195 (CGM)

**DECLARATION OF STEPHAN HÄNSELER IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS THE AMENDED
COMPLAINT**

I, Stephan Hänseler, declare pursuant to 28 U.S.C. 1746, under penalty of perjury under the laws of the United States, that the following is true and correct:

- 1) I am Head of International Custody Operations and Member of the Management Committee at SIX SIS AG ("SIX SIS"). I state the following facts in support of SIX SIS's motion to dismiss based on either (i) my personal knowledge as informed by a review of SIX SIS's corporate records and/or (ii) discussions with SIX SIS personnel.

I. SIX SIS'S CORPORATE ORGANIZATION

- 2) SIS SEGAInterSettle AG, nowadays SIX SIS AG, was formed by the merger of SEGA Schweizerische Effekten-Giro AG (SEGA") and INTERSETTLE Swiss Corporation for International Securities Settlements ("INTERSETTLE") in 1999, under the roof of a holding company, SIS Financial Services Group. SEGA provided centralized safekeeping of securities for all Swiss banks and INTERSETTLE provided for post-trade securities settlement in Switzerland. In 2008, SIS Financial Services Group, the SWX Group (stock exchange business), and the Telekurs Group (financial information business) formed SIX Group. SIX SIS was and is a distinct legal entity that operates as a central securities depository ("CSD") for Swiss securities and a so-called international CSD ("ICSD") for non-Swiss securities. A central securities depository is an infrastructure company that provided its clients with the settlement and custody of securities.
- 3) Until 2016, CSDs in Switzerland were licensed as a bank and regulated by the Swiss Federal Banking Commission under the Swiss Banking Act. As per 1 January 2016, the Swiss Financial Market Infrastructure Act (FMIA) was put into force, modifying the licensing and registration for financial market infrastructures such as stock exchanges, central counterparties, central securities depositories, trade repositories and payment systems.
- 4) Between September 1999 and September 2017, SIX SIS was licensed as a bank under the Swiss Banking Act. In September 2017, the Swiss Financial Market Supervisory Authority FINMA (the successor agency to the Swiss Federal Banking Commission) repealed SIX SIS's banking license and instead issued SIX SIS a license under the FMIA as a CSD.
- 5) Under FMIA, Art. 61 (1) CSD is an infrastructure company that "is the operator of a central custodian or securities settlement system."

- 6) FMIA further provides that CSD's "shall ensure the proper and lawful custody, recording and transfer of securities." *Id.*, Art. 62 (1).
- 7) According to sec. 1.1 of the General Terms and Conditions of SIX SIS, its clients must themselves be bank or securities firms (securities dealers) licensed and regulated by FINMA or an equivalent other state financial regulatory body and be subject to adequate money laundering regulations and supervision.
- 8) While the 2016 FMIA changed the manner of SIX SIS's licensing, there was no change in SIX SIS's corporate function. From 1999 through to the present, SIX SIS was and is an infrastructure company responsible only for the settlement and custody of securities on behalf of its clients. It did not and does not give advice on investments.

II. SIX SIS's Only Role Was to Execute Purchase and Redemption Orders When Instructed to Do so by Its Financial Institution Clients.

- 9) SIX SIS is organized under the laws of Switzerland, is headquartered in Switzerland, and has its principal place of business in Switzerland.
- 10) SIX SIS's sole connection with the Fairfield Funds was to settle and store (as custodian) its clients' investments.
- 11) SIX SIS had no investment discretion over its clients' investments.
- 12) SIX SIS did not advise its clients on their investments.
- 13) SIX SIS did not perform due diligence on, investigate, or monitor securities.
- 14) SIX SIS did not perform due diligence on, investigate or monitor Fairfield Funds or Bernard L. Madoff Investment Securities ("BLMIS").
- 15) SIX SIS did not invest its own money in, or otherwise own shares in, Fairfield or BLMIS.
- 16) SIX SIS did not solicit its clients to invest in any security.
- 17) Instead, SIX SIS merely executed trades on its clients' behalf when directed by its clients to do so. Likewise, when a client directed SIX SIS to redeem a trade, SIX SIS did so.

- 18) SIX SIS provided only administrative execution services for a nominal fee per subscription or redemption. It is my understanding that the fee charged for redemptions was \$125 per transaction.
- 19) SIX SIS did not receive any profits related to the Fairfield Funds' performance.
- 20) SIX SIS did not have knowledge of any possible fraud being committed by Bernard Madoff, BLMIS, or Fairfield.

Dated: 8 July 2022

A handwritten signature in black ink, appearing to read 'S. Hänseler', written over a horizontal line.

Stephan Hänseler